

HUMAN SERVICES BOARD

In re) Fair Hearing No. R-12/09-653
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Appeal of)

The petitioner filed an appeal against the Vocational Rehabilitation Division (VR) of the Department of Disabilities, Aging and Independent Living (DAIL) regarding his disabled adult daughter. The preliminary issue is whether the appeal should be dismissed for the petitioner's failure to prosecute.

On December 15, 2009 the Board received a letter from counsel for DAIL (dated December 11, 2009) forwarding a printout of an email the Director of VR had received from the petitioner on December 10, 2009. The email included a request for a "hearing to be upon numerous Rehabilitation Act violations". The email included the following:

You suggest that you are not sure what issue I wish to mediate. I have been quite clear that I want VocRehab to revamp it's (sic) policies in several specific locations to lessen the likelihood that these abject blunders will be repeated. If my prior communications to your staff were not clear enough, the issue will be made clear at the opening of the hearing.

On December 16, 2009 the Board sent a notice to the parties scheduling a telephone status conference on January 12, 2010. On December 21, 2009 the petitioner sent the Board a letter setting forth jurisdictional issues he wished to discuss at the status conference.

On January 9, 2010 the petitioner sent the Board an email inquiring whether a hearing officer had been appointed and stating that "the Career Choices Program of Rutland Mental Health Services should also be named as respondents for violations of the Federal Developmental Disabilities Act."

On January 12, 2010, the hearing officer conducted a telephone status conference with the petitioner and counsel for the Department. The petitioner represented that he thought the case could be decided on the basis of written arguments. The hearing officer directed the petitioner to file a written statement of the issues and legal arguments he wished the Board to consider, and the Department to file a written response within a week of the petitioner's filing. The hearing officer told the parties he would schedule another status conference in case he had any questions regarding the issues after the parties had filed their

written statements. That status conference was scheduled for February 8, 2010.

On January 19, 2010 the Board received a six-page filing from the petitioner setting forth a history of written exchanges he has had with VR and Career Choices. The filing included generalized complaints that Career Choices had denied him "access to information" and that there was no "specific protocol" for requesting a hearing. The filing concluded with a request "for an appropriate order of compensatory services and also for transportation that our family has provided" and a "demand of systemic relief for written policies and procedures that clarify just when a guardian is supposed to be involved in voc-rehab planning, what notices that clients and guardians re supposed to get regarding access to records, how many guardians it takes to request records and what the state is supposed to do when it gets a complaint regarding issues at an agency such as the Career Choices program, and pertaining to obtaining timely hearings."

The Department filed a written response on January 26, 2010, the gist of which was that VR was not connected with Career Choices, but that VR stood ready and willing to try to serve the petitioner and his daughter.

On February 2, 2010, the petitioner filed a written response requesting that the Department furnish him with copies of certain records, citing sections of several federal VR statutes.

On February 3, 2010 the petitioner sent the hearing officer the following email:

The state's 1/26/10 response at #7 corroborates that I am awaiting records from Career Choices so that they may be utilized in the development of an I.P.E.

Doesn't the state have an obligation to ensure that VocRehab providers such as Career Choices comply with the requirements of the Developmental Disabilities Act concerning a client's access to the program records concerning the client?

I request that we discuss this at the upcoming case conference and that if the state has not indicated to Career Choices by that time it expects it to give me access to the records without the signature of a second guardian that the hearing officer immediately order the state to so inform Career Choices.

The email went on to cite several sections of Vermont VR regulations.

On February 8, 2010 the Board received a written response from VR, dated February 4, 2010, setting forth the Department's purported complete compliance with the petitioner's request for records, including copies of several documents it was sending to the petitioner.

On February 8, 2010 the hearing officer conducted another telephone status conference with the parties. The parties reported that VR had met with the petitioner and that VR was in the process of furnishing the petitioner with all the records he had requested. When asked what issues remained in the case, the petitioner responded that he wanted an "order" that the Board has "jurisdiction" to order "systemic relief". The hearing officer informed the petitioner that he considered such a request to be "too vague", and he directed the petitioner to furnish a more specific written "prayer for relief" as to what he was requesting from the Board. The petitioner did not agree to furnish such a statement, and he demanded that the hearing officer put his directive in writing.

On February 9, 2010 the hearing officer sent the following memorandum to the parties:

To follow up on our telephone status conference of February 8, 2010, I have directed the petitioner to file a written statement detailing the specific relief he is requesting from Human Services Board in this appeal. I will allow the petitioner until February 26, 2010 to do so. The basis for this directive is my inability to understand and determine the issues based on the written filings and oral representations of the parties to date. The petitioner's failure to comply with this directive may result in the dismissal of his appeal.

The Board did not hear from the petitioner again until March 1, 2010, when the Board's clerk received the following email from the petitioner, which he copied to the Department's counsel:

I was finally able to obtain from Career Choices what is purported to be their entire file set on A.S. Now I request that the state provide me with access to its file related to the provision of VocRehab services to A.S. I request that Ms. Monahan make arrangements for that to happen. Career Choices was kind enough to provide me with a photocopied set free of charge so that I didn't have to bring a digital camera and photograph each document one at a time. I would appreciate it if the state decided to also provide me with a photocopied set of A.S. records free of charge ([sic] or I will have to bring in the digital camera. Thank you.

Ms. Guy, would you kindly forward this email to the hearing officer? Thank you.

On March 8, the petitioner copied the Board on an email he sent that day to the Department's counsel that appeared to resolve some final concerns about the petitioner obtaining a copy of the state VR Plan.

In subsequent written submissions and in his oral argument to the Board on April 6, 2010, the petitioner raised an issue regarding the Board's "jurisdiction". To the extent that the Board was able to understand the petitioner's argument, it certainly appears to the Board that the petitioner's appeal in this matter, whenever it was made, was appropriately (even if somewhat belatedly) referred to the

Board by the Department pursuant to 3 V.S.A. § 3091(a). If the petitioner feels otherwise, he is free to pursue his claims without prejudice in whatever forum he thinks appropriate.

The above notwithstanding, the Board is unable to glean from any of the petitioner's oral arguments, representations, or written submissions to date what, if any, issue remains in this case, or what relief the petitioner is requesting from the Board (or any other forum) at this time regarding VR.

ORDER

Inasmuch as the petitioner has failed to adequately and comprehensibly prosecute this matter, his appeal is hereby dismissed. Fair Hearing Rule No. 1000.3L.

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